

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Eastbay Sportswear, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Year Ending 3/31/76. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon Eastbay Sportswear, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eastbay Sportswear, Inc.  
1441 Broadway  
New York, NY 10018

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
21st day of October, 1983.

Connie M. Hagelund

Patricia Kupcheni

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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the Fiscal Year Ending 3/31/76. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon Arthur Spiro the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur Spiro  
Brout and Co.  
380 Madison Ave.  
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
21st day of October, 1983.

*Patricia Kypchani*

*Connie Hagelund*

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 21, 1983

Eastbay Sportswear, Inc.  
1441 Broadway  
New York, NY 10018

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone #(518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Arthur Spiro  
Brout and Co.  
380 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
EASTBAY SPORTSWEAR, INC.  
for Redetermination of a Deficiency or for  
Refund of Corporation Franchise Tax under  
Article 9-A of the Tax Law for the Fiscal Year  
Ended March 31, 1976.

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DECISION

Petitioner, Eastbay Sportswear, Inc., 1441 Broadway, New York, New York 10018, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ended March 31, 1976 (File No. 26892).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1982 at 1:15 P.M., with all briefs to be submitted by April 22, 1983. Petitioner appeared by Brout & Company (Arthur Spiro, C.P.A.). The Audit Division appeared by Paul B. Coburn, Esq. (Michael Gitter, Esq., of counsel).

ISSUE

Whether petitioner had a regular place of business outside New York within the meaning and intent of section 210.3(a)(4) of the Tax Law.

FINDINGS OF FACT

1. On April 17, 1979, the Audit Division issued a Notice of Deficiency against petitioner Eastbay Sportswear, Inc. ("Eastbay") in the amount of \$20,079.00, plus penalty and interest of \$4,884.58, for a total due of \$24,963.58 for the taxable year ended March 31, 1976. The basis for the deficiency was a

determination by the Audit Division that petitioner was not entitled to allocate its income since it did not maintain a regular place of business outside New York State.

2. Eastbay is a New York corporation engaged in the business of importing and selling women's sportswear from the Far East. Eccobay Sportswear, Inc. ("Eccobay") is the parent of Eastbay and several other corporations. Eccobay is also in the business of selling women's sportswear. Eccobay rented office space for itself and its subsidiaries in Los Angeles, California. Eastbay was listed by an individual sign on the door of the California office, along with signs for Eccobay and the rest of the subsidiaries. By agreement dated January 2, 1975, Eastbay and Eccobay agreed to share common office space and expenses. The apportionment of the expenses was to be based on the ratio of the sales volume of each company to the total of the combined sales of all companies owned by Eccobay. Eastbay shared office space and had a showroom assigned to it at the Los Angeles premises where its merchandise was stored and shown to customers. Eastbay had no employees, either in New York or California, other than its president. All work was performed by Eccobay employees for which Eastbay reimbursed Eccobay according to the aforementioned expense-sharing ratio.

3. During the year in issue, Eastbay's sales represented 7.2 percent of the combined sales of Eccobay and its subsidiaries and Eastbay reimbursed Eccobay in the amount of \$103,190.00 for its share of rent, salaries and miscellaneous expenses in both California and New York. Said amount was deducted from Eastbay's gross profit in arriving at its Federal taxable income. Of Eastbay's \$1,456,870.00 in sales for the year in issue, \$301,572.00 in sales were made to points within New York. Using the three factor formula allowed by

20 NYCRR 4-1.1(b), Eastbay determined a 48.586 percent business allocation percentage for its New York corporate tax. Neither Eccobay nor Eastbay paid state taxes in any state other than New York.

4. Petitioner failed to show how many employees of Eccobay worked at the California showroom, how many hours said employees devoted to Eastbay business, the amount of inventory, if any, maintained by Eastbay in California, the percentage of sales of Eastbay traceable to the California office, or the amount of business conducted on behalf of Eastbay at the California office on a weekly or daily basis.

#### CONCLUSIONS OF LAW

A. That section 210.3(a) of the Tax Law provides that, in determining entire net income, business income is to be multiplied by a business allocation percentage. During the year at issue, subparagraph (4) of said paragraph provided that "...if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred percent...".

B. That section 4.11(b) of the Ruling of State Tax Commission dated March 14, 1962 [now 20 NYCRR 4-2.2(b)] defines a regular place of business as "any bona fide office (other than a statutory office), factory, warehouse or other space which is regularly used by the taxpayer in carrying on its business".

C. That, although petitioner rented office space in California from Eccobay, it has not met its burden of proving that such space was regularly used in carrying on its business. Petitioner had no employees in California; there is no evidence of how much work was performed for petitioner by Eccobay employees; there is no indication of whether customers of Eastbay visited the premises on a regular basis or only a few times a year; and there is no evidence


of the level of inventory maintained specifically for Eastbay in California or the amount of sales consummated through the California office. Without a showing of such indicia of an ongoing business operation, it cannot be said that Eastbay was regularly carrying on its business in California within the meaning and intent of section 210.3(a)(4) of the Tax Law. Therefore, the correct business allocation percentage for petitioner's fiscal year ended March 31, 1976 was 100 percent.

D. That the petition of Eastbay Sportswear, Inc. is denied and the Notice of Deficiency issued April 17, 1979 is sustained.

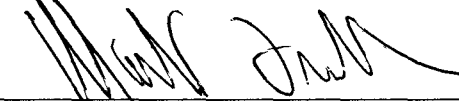
DATED: Albany, New York

STATE TAX COMMISSION

OCT 21 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER